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Paper No.

BANNER & WITCOFF, LTD.  
1100 13th STREET, N.W.  
SUITE 1200  
WASHINGTON DC 20005-4051

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**SEP 25 2008**

In re Application of :  
Karjala et al. :  
Application No. 10/609,011 : LETTER REGARDING  
Filed: June 30, 2003 : PATENT TERM ADJUSTMENT  
Atty Docket No. 004770,00133 :

This letter is in response to the "MISCELLANEOUS PAPER CONCERNING PATENT TERM ADJUSTMENT" filed August 14, 2008. Pursuant to their duty of good faith and candor to the Office, applicants request review of the initial determination of patent term adjustment of seven hundred fifty-one (751) days.

The request for review of the initial determination of patent term adjustment (PTA) is **DISMISSED**.

On July 9, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 751 days. In an abundance of caution, applicants bring to the Office's attention the filing of an authorization for an Examiner's amendment filed by applicants on July 2, 2008.

37 CFR 1.704 (c) provides that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or

examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;


In this instance, after filing a response to the final Office action on April 30, 2008, on July 2, 2008, applicants filed the subject authorization for Examiner's amendment. Applicants' comments have been considered, and the record has been reviewed. This evidence supports a conclusion that the letter filed July 2, 2008 was expressly requested by the Examiner within the meaning of 37 CFR 1.704(c)(8). Accordingly, entry of a period of reduction, pursuant to § 1.704(c)(8), is not warranted.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance of SEVEN HUNDRED FIFTY-ONE (751) days is correct.

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" written in a larger, more prominent script than the last name "Johnson".

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions